

From: Christopher R. Hertel
To: Microsoft ATR
Date: 1/26/02 12:13pm
Subject: Microsoft Settlement

January 25, 2002

Renata B. Hesse, Trial Attorney
Antitrust Division
U.S. Department of Justice
Suite 1200
601 D Street NW
Washington, DC 20530-0001

Regarding: The Microsoft Settlement

Dear Ms. Hesse,

I am a member of the Samba Team, an international group of computer programmers who develop Samba, a free software product. Samba implements Microsoft protocols to allow non-Microsoft systems to interoperate with, and compete against, Microsoft's Windows products. Samba is "Open Source", which means that the source code is available for download via the Internet, free of charge, to anyone.

Though Samba is a volunteer effort, our software has been adopted by many major computer vendors including Hewlett-Packard, IBM, and SGI. Several smaller companies have based their entire businesses on our code, and many organizations (including offices within the Federal Government) rely on Samba. We are, most likely, one of Microsoft's biggest competitors in the file-server market.

Because Samba is critical to so many companies, some members of the Samba Team are employed to help maintain the code. This is unusual in the Open Source community. Most of us, myself included, are not paid for our work but participate because we enjoy programming and want to contribute. Other examples of community-driven software include the Linux operating system and the Apache web server, both of which also compete against Microsoft products. It is difficult to estimate the number of Open Source projects under development, but the SourceForge service alone lists over 32,000 registered projects and more than 340,000 participants.

Clearly, Open Source represents viable competition against Microsoft. Unfortunately, the proposed settlement contains wording which would grant Microsoft the right to specifically exclude Open Source projects

such as Samba from accessing information required for interoperability. In particular:

* In section III.I, the settlement document discusses the payment of royalties and other "monetary consideration".

Open Source developers generally do not keep track of "customers" or collect any money for their products. It is, therefore, impossible to calculate or pay royalties or other fees.

Further, the requirement that protocol and API information be licensed from Microsoft would make any such information unusable in an Open Source project. The term "Open Source" means that we make the source code available to anyone who wishes to see it, copy it, or modify it. That would certainly violate Microsoft's licensing terms.

* In section III.J, Microsoft is granted the right to judge the "business need" of a potential licensee, as well as their "authenticity and viability".

Open Source projects such as Samba and Linux are not businesses. They are community projects, and would certainly be rejected under these criteria. Thus, Open Source developers are prevented from obtaining information about "anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems", exactly the kind of information that is needed to ensure interoperability with Microsoft products.

There are several more examples in the document, but they all amount to the same thing: Open Source developers are being excluded.

There are many arguments to be made against the revised proposed Final Judgment in the Microsoft case. To me, the most striking is that Microsoft would be allowed to continue control access to this critical information. I urge the Department of Justice to withdraw its consent to the revised proposed Final Judgment.

Sincerely,

Christopher R. Hertel
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Saint Paul, Minnesota 55104

References

Samba Mirrors:

<http://www.samba.org/>

SourceForge:

<http://www.sourceforge.net/>

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Samba Team -- <http://www.samba.org/> -)----- Christopher R. Hertel
jCIFS Team -- <http://jcifs.samba.org/> -)----- ubiqx development, uninq.
ubiqx Team -- <http://www.ubiqx.org/> -)----- crh@ubiqx.mn.org